

**BUSINESS REPORT**

**MONTANA HOUSE OF REPRESENTATIVES  
61st LEGISLATURE - REGULAR SESSION**

**HOUSE LOCAL GOVERNMENT COMMITTEE**

**Date:** Thursday, February 5, 2009  
**Place:** Capitol

**Time:** 3:00 pm  
**Room:** 172

**BILLS and RESOLUTIONS HEARD:**

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

HB 324, HB 331, HB 361

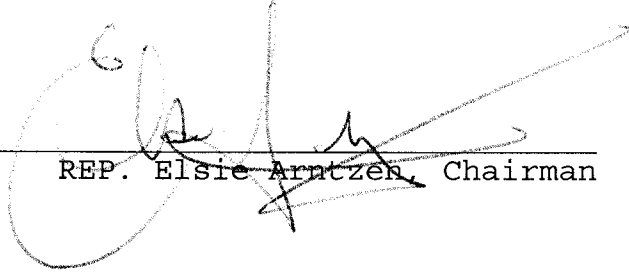
**EXECUTIVE ACTION TAKEN:**

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

HB 156 - DPAA      HB 230 - DPAA      \_\_\_\_\_

\_\_\_\_\_

**COMMENTS:**

  
\_\_\_\_\_  
REP. Elsie Arntzen, Chairman

**HOUSE OF REPRESENTATIVES**  
**Roll Call**  
**Local Government Committee**

DATE: 2/5/2009

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Vice Chair MacLaren	X	
Vice Chair Hands	X	
Representative Becker	X	
Representative Bennett	X	
Representative Berry	X	
Representative Driscoll	X	
Representative Ebinger	X	
Representative Grinde	X	
Representative Hamilton	X	
Representative Ingraham	X	
Representative Menahan	X	
Representative More	X	
Representative Reichner	X	
Representative Reinhart	X	
Representative Sands	X	
Representative Stahl	X	
Representative Vance	X	
Chairman Arntzen	X	



## HOUSE STANDING COMMITTEE REPORT

February 6, 2009

Page 1 of 3

Mr. Speaker:

We, your committee on **Local Government** recommend that **House Bill 156** (first reading copy – white) **do pass as amended.**

Signed:

*Representative Elsie Arntzen, Chair*

**And, that such amendments read:**

1. Title, page 1, line 5.

**Following:** "REGULATIONS;"

**Insert:** "ALLOWING A 10-DAY PERIOD TO BRING A VIOLATION INTO COMPLIANCE;"

2. Title, page 1, line 8.

**Following:** "SECTIONS"

**Insert:** ", 76-2-113, 76-2-210,"

**Following:** "76-2-211"

**Insert:** ", 76-2-308,"

3. Page 1.

**Following:** line 18

**Insert:** "Section 2. Section 76-2-113, MCA, is amended to read:

"76-2-113. **Enforcement of zoning provisions.** (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(1) (a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) (b) restrain, correct, or abate a violation;

(3) (c) prevent the occupancy of a building, structure, or land; or

**Committee Vote:**

**Yes 15, No 3**

Fiscal Note Required \_\_\_

HB0156001SC.hjd

~~(4)~~(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) The county shall attempt to obtain voluntary compliance at least 10 working days before filing a complaint for a violation of this part that is subject to the penalties under [section 1]."

**Insert:** "Section 3. Section 76-2-210, MCA, is amended to read:

"76-2-210. **Enforcement of zoning provisions.** (1) ~~in case If~~ any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution ~~made under authority conferred hereby~~ adopted under this part, the ~~proper authorities~~ of the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent ~~such the~~ unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to

(b) restrain, correct, or abate ~~such a~~ violation; to

(c) prevent the occupancy of ~~such the~~ building, structure, or land; or to

(d) prevent any illegal act, conduct, business, or use in or ~~about such near the~~ premises.

(2) The county shall attempt to obtain voluntary compliance at least 10 working days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

~~(2)~~(3) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions."

**Renumber:** subsequent sections

4. Page 1.

**Following:** line 26

**Insert:** "Section 5. Section 76-2-308, MCA, is amended to read:

"76-2-308. **Enforcement of zoning regulations and ordinances.** (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance ~~made thereunder~~ adopted under this part.

(2) ~~in case any If a~~ building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation ~~made under authority conferred hereby~~ adopted under this part, the ~~proper local authorities~~ of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent ~~such the~~ unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or

use; to

(b) restrain, correct, or abate ~~such a~~ violation; to

(c) prevent the occupancy of ~~such the~~ building, structure, or land; or to

(d) prevent any illegal act, conduct, business, or use in or about ~~such near the~~ premises.

(3) The municipality shall attempt to obtain voluntary compliance at least 10 working days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-315."

**Renumber:** subsequent sections

- END -



## HOUSE STANDING COMMITTEE REPORT

February 6, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Local Government** recommend that **House Bill 230** (first reading copy – white) do pass as amended.

Signed:

*Elsie Arntzen*  
Representative Elsie Arntzen, Chair

And, that such amendments read:

1. Title, line 5.

Following: "ALLOW FOR"

Insert: "LIMITED"

2. Page 1, line 12.

Following: "program"

Insert: -- award value limited

Following: "."

Insert: "(1)"

3. Page 1, line 15.

Strike: "(1)"

Insert: "(a)"

4. Page 1, line 17.

Strike: "(2)"

Insert: "(b)"

5. Page 1.

Following: line 18

Insert: "(2) An award to an individual under this part may not exceed \$50 in value."

- END -

Committee Vote:

Yes 14, No 4

Fiscal Note Required ☐

HB0230001SC.hjd

**AUTHORIZED  
COMMITTEE PROXY**

I request to be excused from the Local Government

Committee because of other commitments. I desire to leave my proxy vote with:

\_\_\_\_\_

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 23001 .nj	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HB 230	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
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BILL/AMENDMENT	AYE	NO
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Rep. Robyn Driscoll  
(Signature)

Date \_\_\_\_\_

①

Date 2/5/09

Bill No. HB 324

**Sponsor(s)**

Ref. Hrnitzen

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[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

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# Montana House of Representatives Visitors Register

Local Government

Date 2/5/09

Bill No. HB 331 Sponsor(s) Rep. Morgan

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Name and Address	Representing	Support	Oppose	Inf.
Ellen Leahy	AMPHD - MISSOULA HEALTH DEPT.	X		
Shannon Thernault	Missoula Health Dept	X		
John MacDonald	City of Missoula	X		
Gordon Morris	LEWIS & CLARK Co	X		
Dean L. Rasmussen	CMHD	X		
Brad Griffin	mt Ret & Rest Assoc		X	
Neil Peterson	Gaming Industry		X	
Lea Jordan	Flathead County	X		
Mike Henderson	MPHA - Flathead County Health	X		
Jane Smith	DPHHS	X		
Margaret Corcoran	Benny's Bistro	X		
Barbara Schneeman	RiverStone Health	X		
Ed BARTHELT	VEHLENSTON COUNTY	X		
Donna Alexander	G Store Assoc		X	
Harold Blatto	MACE	X		
Anna Stoll	AMPHD	✓		
Laura Hendley	Lewis & Clark County Health	✓		
Laurel Riek	Lewis & Clark Co Health	✓		
Jim Murphy	DPHHS	✓		
Shannon McDonald	DPHHS	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

**Montana House of Representatives  
Visitors Register**

**Local Government**

**Date** 2/5/09

**Bill No.** HB 361 **Sponsor(s)** Rep. Wiseman

**PLEASE PRINT**

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Name and Address	Representing	Support	Oppose	Inf.
Dustin Stewart	MBTA	X		
Gordon Morris	L+C County	X		
Andy Torke	Self	X		
Anna Rosenberry	City of Bozeman	X		
Jake Fitzgerald	Montana Fair		X	
Chuck Magnaw	NIZDC / IZNP	✓		
Kyla Wierks	MEIC	✓		
Dana Brown	LAC Boz	✓		
Traug Lame	DOR			✓
Michelle Crepeau	DOR			✓
Gary Wiens	MECA		X	
Dan Flynn	IBEW		X	
Mike Volshy	Governor's Office	X		
ROBIN SHROPSHIRE	HELENA CITY COMMISS.	X		
CHRISTY CURD	THE SAVE FOUND.	X		
Chris Schweitz	MSA	C		
Jessica Peterson	AERO	X		

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

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**HB 331 – Revise laws relating to licensed establishments for health purposes.**  
Sponsored by Representative Penny Morgan

**Purpose:** HB 331 would authorize and set rule-making parameters for the Department of Public Health and Human Services to establish fees for the licensing and inspection of food establishments, public accommodations, trailer parks, and campgrounds. State statute currently sets the license and inspection fees for these mandated programs. Administrative rule-making would address the following longstanding problems associated with the current fee structure:

**Current Situation:**

- **Fees are inequitably assessed.** Large, complex operations (box store with a deli, bakery, meat counter, restaurant and grocery) and small to moderate-sized, simple operations (coffee shop, local restaurant, bar) pay the same \$90 annual licensing fee. Likewise, a large convention-type hotel and a small motel pay the same \$40 annual public accommodation licensing fee. *(Only smallest food licensees with no more than 2 employees pay \$60 fee.)*
- **Majority of costs are being paid by local governments.** Only 25% of the cost to conduct state mandated inspection and licensing is covered by the current fee structure; the remaining costs are borne by local governments. A 2008 survey of Montana counties, in which 68% of counties participated, showed that over \$2 million of the licensing and inspection costs are paid by local government.
- **Fee structure threatens public health.** When counties cannot cover the cost of licensing and inspection, the actions required to protect the public's health *and* our tourism industry are left undone. Counties that do supplement the licensing and inspection fees to carry out the mandate *must divert local tax dollars from other necessary public health activities, such as immunizations, to do so.*

**Necessity of policy change:**

- Each local health department has been surveyed on the costs to run their licensed establishment programs. As of December 31, 2008, 68% of the counties, representing 90% of the state's population, have responded. The data demonstrated that only 25% of local costs are reimbursed by fees, *costing local health departments over \$2 million in local taxes annually* to carry out this state mandate.
- State law mandates local health departments inspect all licensed establishments within their jurisdiction at least once a year. License fees do not cover the costs of inspection or other aspects of the program such as operator education and inspector training. Yet, current statute limits what money can be collected locally.

### Benefits of Montana's Licensed Establishment Program:

- Montana's licensed establishment program prevents foodborne illness. The Centers for Disease Control and Prevention (CDC) estimates that each year there are as many as 76 million cases of foodborne illness resulting in 325,000 hospitalizations and 5,000 deaths in the United States.
- Montana's licensed establishment program protects our food supply. Our nation's food supply is increasingly produced, processed and handled in central locations, a practice that has given rise to cross-contamination of food products wherein the final safeguard against foodborne illness rests in safe handling (proper sanitation and thorough cooking) before consumption.
- Montana's licensed establishment program protects consumers. By enforcing regulations ranging from requiring clean sheets between guests to eradication of bed bugs to clean water and adequate sewer systems, Montana's licensed establishment program helps protect consumer safety in hotels, motels, trailer courts and campgrounds.

### Key Provisions of HB 331

- HB 331 changes four statutes affecting: retail food establishments; public accommodations; trailer courts and campgrounds; and wholesale food establishments.
- HB 331 creates parameters for DPHHS to establish license fees in rule, instead of one-size-fits-all fee amounts set in statute.
- HB 331 sets a minimum licensing and inspection fee which is equal to the current fee of \$90 and limits licensing and inspection fees to being no more than the cost of the program, which must be verified during rule-making.
- HB 331 requires licensing and inspection fees to be equitable and based on available information. The bill also lists factors upon which to base the fees specific to the type of establishment in each statute.
- ~~HB 331 no longer exempts from licensing food service in hotels and motels which serve only their guests. Currently, hotels and motels providing complimentary breakfasts and/or "happy hour" food are exempt from paying a licensing and inspection fee. However, these establishments are inspected by local public health.~~
- HB 331 addresses county payments from the local Board of Health inspection fund. Current language requires that this money be used to supplement, not supplant other funds counties receive "for the same purpose." Because Counties have had to supplement the costs of performing state mandated licensing and inspection costs with local tax revenues, it is inevitable that some local tax money will be supplanted by increased license fees. HB 331 provides that local Board of Health inspection funds may **only** be used for the licensed establishment program.
- HB 331 requires *that all licensees be notified when rule-making is proposed.*

*AMPHO, the Association of Montana Public Health Officials, is the lead organization proposing the restructuring of state mandated licensing and inspection fees. AMPHO is committed to working with DPHHS and licensees to equitably restructure fees through administrative rule-making. HB 331 is supported by the Montana Association of Counties.*

# County of Valley

State of Montana

Valley County Environmental Health Department

501 Court Square, Box 11

Glasgow, MT 59230-0202

Cameron Shipp, R.S.

County Sanitarian/Floodplain Administrator

Tracie Vaughn

Administrative Assistant

February 2, 2009

Attn: Representative Elsie Arntzen, Chair and members of the Local Government Committee

Re: H.B. 331

Dear Chair and members of the Local Government Committee,

Valley County Environmental Health Department is in support of H.B. 331. My department represents small counties across Montana with minimal staff, many with one sanitarian. Many counties have been faced with increasing expenses that translates into less money to do what we, as sanitarians are required to do through mandated state laws.

The fees the counties receive from the licensed establishments aids in offsetting the costs of day-to-day expenses that it takes to manage the inspections needed to protect public health.

An increase in fees will help in justifying more time towards food safety classes for food establishment employees, additional inspections in high risk establishments, etc. It seems that justification where the money goes in each department is a large function of government. If areas are not funded adequately then those programs are lacking. H.B. 331 is positive for us and will aid in maintaining and improving programs.

If H.B. 331 is passed it will allow more flexibility in establishing fees and improve the overall structure of these mandated programs.

Best Regards,

  
Cam Shipp R.S.



## **Flathead City-County Health Department**

1035 First Ave. West Kalispell, MT 59901

(406) 751-8101 FAX 751-8102

[www.flatheadhealth.org](http://www.flatheadhealth.org)

Community Health Services

751-8110 FAX 751-8111

Environmental Health Services

751-8130 FAX 751-8131

Reproductive Health Services

751-8150 FAX 751-8151

Home Health Services

751-6800 FAX 751-6807

WIC Services

751-8170 FAX 751-8171

February 3, 2009

Representative Scott Reichner  
Montana House of Representatives  
Capital Station  
Helena, MT 59620

Re: HB 331

Dear Representative Reichner,

As a Flathead area representative and a member of the House Appropriations Committee I hope to draw your attention to the importance of passing HB 331. HB 331 establishes fee setting for food service establishments, public accommodations and trailer courts/RV parks as a rule-making process.

Fee setting in rule is, by far and away, the norm for establishing state-wide fees in Montana. The administrative rule process establishes a means and requirement for public/industry participation in the process. It will allow expanded public participation that may establish a more equitable approach to the fees. A small, limited service food service establishment pays the same as fees as the largest restaurant in the Flathead.

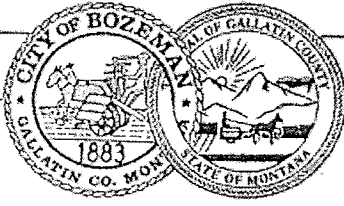
The Flathead City-County Health Department is responsible for the inspection of these state-licensed facilities. The fees collected and reimbursed to local health departments cover only a small portion of the costs of complying with the inspection requirement set by the state. In Flathead County, reimbursed fees cover no more than 38% of the overall program costs and it would be a much smaller portion if we were not able to incorporate this service with other public health programming. I'm sure you realize that we make up the difference in revenue with property tax dollars.

We urge your support for HB 331. If you have any questions regarding this matter please call me at 751-8103.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Russell".

Joseph W. Russell, R.S., M.P.H.  
Health Officer



[www.gallatin.mt.gov/health](http://www.gallatin.mt.gov/health)

## Gallatin City-County Health Department

Human Services  
215 W. Mendenhall, Rm 117  
Bozeman, MT 59715-3478  
(406) 582-3100 • Fax (406) 582-3112

Environmental Health Services  
215 W. Mendenhall, Rm 108  
Bozeman, MT 59715-3478  
406-582-3120 • Fax: 406-582-3128

February 2, 2009

Representative Elsie Arntzen, Chair  
Local Government Committee

Dear Chairman Arntzen:

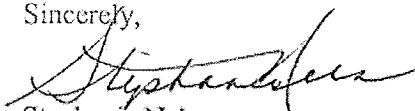
The Gallatin City-County Health Department strongly supports HB331 and urge the Local Government Committee to favorably receive this important legislation. The Montana Association of Counties (MACo) and the Gallatin County Commission also support this bill. Please read the fact sheet created by the Association of Montana Public Health Officials (AMPHO) to understand the important matters addressed by this bill.

In FY08, Gallatin County had to use approximately \$93,000 of local tax dollars to pay for the cost of implementing this State mandated program. Those diverted tax dollars could have been used to pay for other local public health initiatives or programs that would benefit the citizens of Gallatin County.

HB 331 would allow other program inequities to be addressed in the rule making process. Currently, all food establishments with 3 or more employees pay the same licensed fee. However, the relative risk to public health and the time to perform inspections is not equally shared between establishments. For example, a tavern or convenience store can be inspected rather quickly and easily whereas a large restaurant with a complex menu or a grocery store poses a much higher public health risk and takes considerably longer to inspect than the tavern. However, their license fee is the same. If passed, HB331 will address this issue.

It is the duty and privilege of the Gallatin City-County Health Department to serve the citizens of Gallatin County. If passed, HB331 will improve upon the ability of local health departments to perform that service by putting diverted resources back to work in the community.

Sincerely,

  
Stephanie Nelson  
Gallatin County Health Officer



BCC 2009-026  
February 3, 2009

PHONE: (406) 258-4877  
FAX: (406) 721-4043

Representative Elsie Arntzen, Chair  
House Local Government Committee

**RE: Support for HB 331: Revising Laws Related to Licensed Establishments**

Dear Representative Arntzen and Committee Member:

We strongly support, and urge your support of, Representative Morgan's House Bill 331 regarding licensed establishment fees. Our local City-County Health Department annually spends over \$250,000 in City and County tax dollars to comply with this unfunded mandate.

We need relief from this reimbursement scheme which covers only 25% of our costs and robs local tax coffers at the expense of other public health services. In fact, it appears that this unfunded mandate violates MCA §1-2-112(1) and (2)(b).

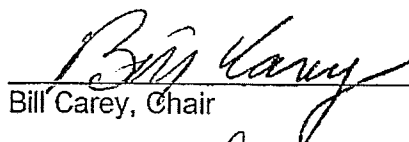
Further benefits of placing the fee-setting in administrative rule include:

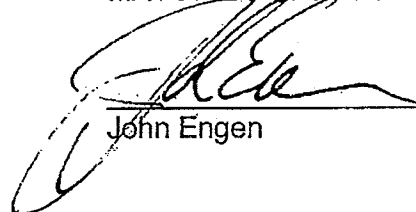
- Correct the current inequity of fee assessment among the broad range of types and sizes of licensed establishments which now all pay a one-size-fits-all fee.
- Require notification of all licensees when rule-making ensues.
- Provide a forum and opportunity for participation of all parties for costing-out, verifying and assessing fees, similar to that which is done with many other state and local fees.

We urgently request your support of HB 331 and we are committed to participating constructively in a rule-making process that can more fairly set fees.


Sincerely,  
BOARD OF COUNTY COMMISSIONERS

MAYOR OF MISSOULA

  
Bill Carey, Chair

  
John Engen

  
Jean Curtiss, Commissioner

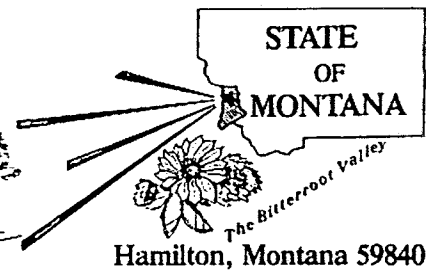
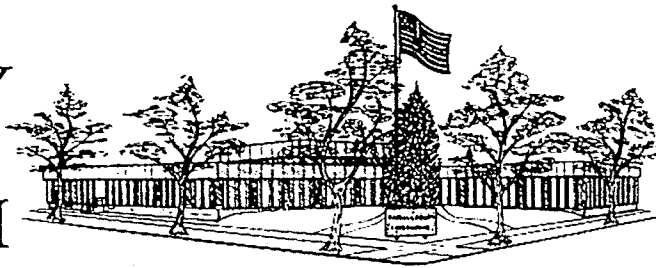
  
Michele Landquist, Commissioner

BCC/JE/ppr

cc: Ellen Leahy, Director, City-County Health Department



# COUNTY OF RAVALLI



Ravalli County Commissioners  
215 South 4<sup>th</sup> Street, Suite A  
Hamilton, MT 59840  
406-375-6500  
Fax 406-375-6507

February 2, 2009

Representative Elsie Arntzen, Chair  
House Local Government Committee  
PO Box 200401  
Helena, MT 59620-0401

Dear Representative Arntzen, Chair, and Members of the Committee:

Ravalli County supports House Bill 331. The purpose of House Bill 331 is to authorize and set rule-making parameters for the Department of Public Health and Human Services to establish fees for the licensing and inspection of food establishments, public accommodations, trailer parks, and campgrounds.

The approximate 40,000 residents of Ravalli County comprise over 4% of Montana's population. It costs Ravalli County about \$90,000 each year to conduct our licensed establishment program. In 2008, we generated about \$30,000 from fees. This covered only 37% of our costs in administering our program. Therefore, in 2008, **\$59,385 of tax payer money** was spent to supplement the cost of the program in Ravalli County. Our three year average (2006-2008) revenue from this program was only about \$20,000, covering only 22% of our cost. Our revenues from this program are so poor compared to the cost of administering the program, the Board of County Commissioners actually considered severing the contract with the State of Montana.

Allowing local regulators to participate in the rule making process by taking these fees out of statute and placing them into rule is invaluable. This legislation would also allow for a greater assessment of the actual cost of protecting public health through the licensed establishment program. Also of note is that all other fees, local or other, are set in rule as opposed to statute, as are fees in other states. Having the fees established in rule also helps avoid "one-size fits all" fees for our diverse counties.


Finally, this program is essential to protecting public health. Through this program, our food supply is protected and many foodborne illnesses are prevented through proper


training of food handling. Consumers continue to be protected from unsanitary conditions in public establishments by the enforcement of public health laws surrounding drinking water, sewage disposal, and pest control. Adequate funding of this program will ensure the licensed establishment program will be a high priority.

Thank you for your consideration of our comments. We urge you to support House Bill 331.

Sincerely,

RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS

  
Carlotta Grandstaff, Chairman  
Chairman

  
Greg Chilcott, Member

  
J.R. Iman, Member

  
James E. Rokosch, Vice-

  
Kathleen Driscoll, Member



Lake County Commissioners

406-883-7204

Fax (406) 883-7283

## LAKE COUNTY

106 4th Avenue East

Polson, Montana 59860

February 2, 2009

Representative Elsie Arntzen, Chair  
 House Local Government Committee  
 Montana House of Representatives  
 P.O. Box 200401  
 Helena, Montana 59620-0401

RE: LETTER OF SUPPORT  
 House Bill 331 – Revise Laws Relating to Licensed Establishments for Health Purposes

Dear Representative Arntzen, Chair, and Members of the Committee:

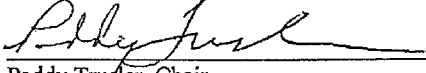
The purpose of House Bill 331 is to move Montana Department of Health and Human Services licensing fees from statute into rule. Licensed establishments include food service establishments, food manufacturing establishments, trailer parks, campgrounds, and public accommodations.

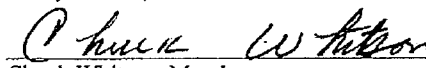
Lake County SUPPORTS this legislation:

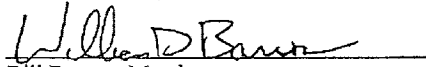
1. License Fees Should be Located in Rule: Statutes are intended to provide overarching regulation while rules are intended to address administrative and regulatory details that may change over time. License fees should be located in rule to allow for the flexibility to respond to changes in types of establishments and in costs to administer these programs.
2. Legislative Process Is Problematic in Setting Equitable Fees: Trying to change license fees to reflect program costs and to be equitable between types of establishments has been problematic through the legislative process. These discussions are best addressed through rulemaking where both government and industry can have in-depth collaboration to find the most equitable means to set fees.
3. Current Licensing Fees Are Generally Inadequate and Inequitable: Lake County receives only 17% of actual licensed establishment program costs through the licensed establishment program fees. This leaves 83% of the program funded by the county taxpayer. While Lake County acknowledges the licensed establishment program has broad public health benefit, a more equitable percentage of the program costs should be borne by the license fees.
4. Adequate License Fees Provide Benefits to Establishments: The licensed establishment program provides multiple direct benefits to licensees; adequate fees assure a competent program. Licensing provides assurance to the public that the establishment meets public health and safety standards, provides response to cases of food or water-borne illness that may limit liability of the establishment, provides educational public health and safety programs, and serves as a resource for a variety of current industry information.
5. Adequate Funding Provides Public Health and Safety Compliance: Adequate funding of the licensed establishment programs will assure more priority is given these essential programs. This added priority will bring better compliance oversight and assure public health and safety.


Thank you for your consideration of Lake County's comments urging your support of House Bill 331.

BOARD OF LAKE COUNTY COMMISSIONERS:

  
 Paddy Trusler, Chair

  
 Chuck Whitson, Member

  
 Bill Barron, Member

From: "Barbara Woodbury" <bwoodbury@parkcounty.org>  
Subject: **Support for HB 331**  
Date: February 5, 2009 8:41:09 AM MST  
To: <emcgowanfincham@mt.net>  
 1 Attachment, 5.5 KB [Save ▼](#) [Slideshow](#)

Representatives,

I wanted to write you in support of HB 331. Taking the license fees out of statute and placing them into rule will make it easier for the fees to be adjusted with the cost of the program as needed. Funding the food inspection program pays for the inspection process, but it also pays for us to be resources for these facilities. We not only conduct inspections, but we conduct educational activities, plan reviews, and other services. As a sanitarian I am well aware that food borne illness present a real danger to the health of the citizens I serve. I want to thank you for sponsoring this bill and for helping the local health departments to fund adequate programs for all of our licensed establishments.

Sincerely,

Barbara Woodbury, R.S.

Barbara Woodbury, R.S., M.P.H.

Director of Environmental Health

Park City-County Health Dept.



February 4, 2009

Representative Elsie Arntzen, Chair  
Local Government Committee

Dear Chairperson Arntzen:

The Montana Public Health Association (MPHA) is pleased to submit a letter of support for House Bill 331. MPHA is an organization with a diverse membership, which includes public health workers as well as partners from other professions; MPHA promotes public health practice and policies in Montana.

The importance of this passage to local jurisdictions is significant. The fiscal burden of performing inspections on licensed establishments is inequitably supported by the fees that are generated by this program. This places a burden on limited tax dollars and diverts funds from other public health programs.

A rule-making process for setting these fees would better allow the wide range of licensed establishments affected to work with DPHHS and local health departments in recommending a way to more fairly assess the fee. Small establishments should not be charged the same as large ones and local health departments cannot carry the majority of the cost for this unfunded mandate.

Ginger Roll, RN

President

Montana Public Health Association

[groll@rosebudcountymt.com](mailto:groll@rosebudcountymt.com)



**BOARD OF COUNTY COMMISSIONERS**

**Andy Hunthausen**

**Michael A. Murray**

**Derek Brown**

City County Building 316 North Park

Helena, Montana 59623 406.447.8304 Fax: 406.447.8370

February 4, 2009

Representative Elsie Arntzen  
Chairman House Local Government Committee  
And Committee Members  
Montana House of Representatives  
PO Box 200400  
Helena, MT 59620-0400

RE: HB 331 – “An Act Revising Laws Relating to Licensed Establishments”

The Honorable Elsie Arntzen:

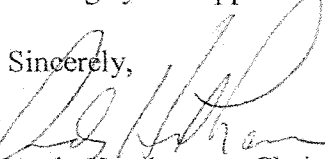
The Lewis and Clark County Commissioners are in support of HB 331. Public health disease prevention requires commitment to protecting the nations food supply and consumer protection needs from the federal to the local level. Our health department has participated in food recall audits, national food borne illness outbreak investigations, and conducting inspections of local facilities and evaluating risk of food borne illness.


Lewis and Clark County spends approximately \$153,000 from local tax dollars to fund the program. Locally, just 16% of the cost of disease prevention in licensed establishments is funded by license fees. This is an unfair burden on local tax payers for a state mandated program.


Administrative rule-making can set up realistic algorithms for equitable assessment of fees within the framework established in HB 331.

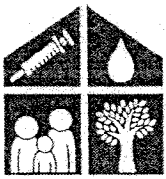
We urge your support of this important legislation.

Sincerely,

  
Andy Hunthausen, Chair

  
Mike Murray, Commissioner

  
Derek Brown, Commissioner



# LEWIS & CLARK CITY-COUNTY Health Department

1930 Ninth Avenue  
Helena, MT 59601  
PH: 406.4HEALTH or 406.443.2584  
Fax: 406.457.8990

Representative Elsie Arntzen  
Chairman House Local Government Committee  
And Committee Members  
Montana House of Representatives  
PO Box 200400  
Helena, MT 59620-0400  
RE: HB 331 – "An Act Revising Laws Relating to Licensed Establishments"

The Honorable Elsie Arntzen:

The Lewis & Clark City-County Health Department Sanitarians are the "boots on the ground" that we rely upon to protect the food supply from contamination and the public from food borne illness. They conduct regular inspections of licensed establishments and provide food safety training to food handlers. They investigate food borne illness and respond to consumer complaints. They audit the effectiveness of national food recalls, and participate in national outbreak investigations.

Under the present funding structure, the County receives \$81.00 per full service food establishment license. The reimbursement is the same regardless of the size or complexity of the operation. One inspection of a full service restaurant may take several hours. License fee disbursements to this county fund just 16% of the program cost. This shortfall requires approximately \$153,000 annually from local tax dollars. The squeeze that results forces competition for resources that has the Board of Health choosing which disease should be prevented.

The Lewis & Clark City-County Board of Health supports HB 331. Administrative rule-making can set up equitable assessment of fees within the framework established in HB 331. It will also provide the means to sustain a vital public health service to the citizens of Montana.

Please help pass HB 331.

Sincerely,

David Krainacker MD, PhD  
Chair, Lewis and Clark City-County Board of Health

Cc: Melanie Reynolds, Health Officer, Lewis and Clark County

*"To Improve and Protect the Health of all Lewis and Clark County"*



## Montana Legislative Services Division

### Legal Services Office

October 30, 2008

TO: Fire Suppression Committee

FROM: Greg Petesch

RE: LC0496

I am writing with regard to LC0496, a copy of which is enclosed. The apparent purpose of LC0496 is to allow county governments to adopt community decay ordinances that allow county governments to engage in fuel reduction programs on federal forest land. It is my opinion that under our system of government in the United States, a county lacks the authority to require the United States government or an agency of the United States government to follow county policies or procedures related to land use.

The United States Constitution contains a supremacy clause in Article VI, clause 2. That provision declares the laws of the United States to be the supreme law of the land notwithstanding anything contrary in the constitutions or laws of any state. Pursuant to this authority, the activities of the federal government are free from regulation by any state unless Congress has authorized regulation of federal instrumentalities by the state. See Mayo v. United States, 319 U.S. 441 (1943). Unless Congress has specifically authorized state or local regulation, the police power of the states and counties does not extend to imposing procedural or substantive requirements upon the federal government. See Hancock v. Train, 426 U.S. 167, 178 (1976). See also United States v. Montana, 699 F. Supp. 835 (D. Mont. 1988), in which Judge Hatfield held that the state could not apply its building code to construction projects on federal military installations.

Where Congress has provided authority, a state may make the federal government subject to state laws. See United States v. Idaho Department of Water Resources, 508 U.S. 1 (1993), in which the United States Supreme Court construed the McCarran Amendment, 43 U.S.C. 666, allowing a state to join the United States as a defendant in a comprehensive adjudication of water rights.

With respect to the authority of a county to apply ordinances to federal land, that issue has also been addressed. In 1993, Nye County, Nevada, began to take action with regard to closed roads on federal land, including bulldozing roads on federal land based upon resolutions passed by the County. The federal government filed suit seeking a declaratory judgment that it owned the land and had the authority to manage the land within Nye County and that the County resolution regarding roads and rights of way was preempted. In U.S. v. Nye County, Nevada, 920 F. Supp. 1108 (D. Nev. 1996), the U.S. District Court granted summary judgment to the U.S.

While the Fire Suppression Committee may intend to fan the flames of the Sagebrush Rebellion, it is my responsibility to point out that LC0496 violates the Supremacy Clause of the United States Constitution as construed in the cases cited in this memorandum.



ATTORNEY GENERAL  
STATE OF MONTANA

Joseph P. Mazurek  
Attorney General



Department of Justice  
215 North Sanders  
PO Box 201401  
Helena, MT 59620-1401

June 11, 1993

Mr. Mike McGrath  
Lewis and Clark County Attorney  
County Courthouse  
228 Broadway  
Helena, MT 59623

STATE LAW LIBRARY

JUN 15 1993

IN MONTANA

Mr. Keith D. Haker  
Custer County Attorney  
1010 Main Street  
Miles City, MT 59301

Dear Mr. McGrath and Mr. Haker:

You have requested my opinion concerning questions I have consolidated as follows:

Does a board of county commissioners have the authority to: (1) regulate land uses upon federal or state lands; and (2) prevent the acquisition of land by the federal or state government?

These questions have arisen in the context of proposals submitted for the adoption of a package of county land use ordinances. The exact proposed ordinances vary, but a general movement exists to promote the adoption of county ordinances that establish, inter alia:

1. that federal agencies must notify the county a set number of days prior to issuing land management decisions;
2. limitations upon the federal government's ability to designate additional wilderness areas and wild and scenic rivers;
3. that the amount of federal or state land within the county may not be increased;
4. that all federal natural resource decisions shall be dictated by principles protecting private property rights, protecting local custom and culture, and opening new economic opportunities through reliance on free-markets; and

5. a county threatened and endangered species committee for overseeing protection and recovery of all state and federal listed species.

In sum, these and other proposed county ordinances seek to restrict the traditional public land regulatory authority of federal and state governments. You inquire as to the validity of the proposed ordinances. I will begin my analysis with the federal aspect of the questions presented, including the history of the federal public lands.

Historically, at the inception of our Union, the public domain included a substantial area with seemingly inexhaustible natural resources. As a result, the federal government undertook a policy of disposal and made these public lands readily available to private citizens, states, counties, cities and companies for purposes such as homesteading, town sites, educational purposes and railroad construction. Bennett, Public Land Policy: Reconciliation of Public Use and Private Development, 11 Rocky Mtn. Min. L. Inst. 311, 314-15 (1966); see also Nat'l Wildlife Fed'n v. Burford, 835 F.2d 305, 307-09 (D.C. Cir. 1987) (reviewing the government's past management of the federal public lands). Near the end of the 19th century, however, the federal government began changing its prior policy of disposal to one of retention and management. Bennett, supra, at 318-22. Beginning in 1872, when Congress set aside Yellowstone National Park, a variety of federal laws allowing presidential withdrawals and congressional reservations were enacted. See, e.g., Act of March 1, 1872, ch. 24, 17 Stat. 32 (codified at 16 U.S.C. § 21 (1988)); Forest Reserve Act, ch. 561, 26 Stat. 1103 (1891) (codified as amended at 16 U.S.C. §§ 471(a)-533p (1988)); Pickett Act, ch. 421, 36 Stat. 847 (1910) (codified as amended at 43 U.S.C. §§ 141-158 (1988)); Antiquities Act, ch. 3060, 34 Stat. 225 (1906) (codified as amended at 16 U.S.C. § 431 (1988)). More recently, Congress has enacted the Federal Land and Policy Management Act of 1976 [FLPMA], 90 Stat. 2743 (codified as amended at 43 U.S.C. §§ 1701-1784 (1988)), and the Forest and Rangeland Renewable Resource Planning Act of 1974 [RPA], 90 Stat. 2949 (codified as amended at 16 U.S.C. §§ 1600-1687 (1988)). FLPMA currently controls the classification and withdrawals of federal public lands, and both FLPMA and RPA, along with the corresponding regulations, establish management plans for these lands in coordination with other applicable federal legislation. See, e.g., 43 U.S.C. § 1712; 43 C.F.R. § 1610.1 to -.8; 16 U.S.C. § 1604; 36 C.F.R. §§ 219.1 to -.29.

Congressional control over these federal public lands is grounded in Article IV of the Constitution, also known as the Property Clause. This Article provides that

Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in the constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

The United States Supreme Court has repeatedly held that Congress's power over these lands is without limitations. Kleppe v. New Mexico, 426 U.S. 529, 539 (1976); United States v. San Francisco, 310 U.S. 16, 29-30 (1940). While a state may enact laws that apply to Article IV federal public lands, the Supremacy Clause, U.S. Const., art. VI, cl. 2, requires that federal legislation overrides any conflicting state laws that are applicable to these lands. Kleppe, 426 U.S. at 543. Further, unless clear congressional authority specifies otherwise, the Supremacy

Clause provides the federal government immunity from local ordinances which attempt to compel the federal government to comply with local requirements which may be consistent with the federal statutes. See, e.g., Hancock v. Train, 426 U.S. 167 (1976); United States v. State of Montana, 699 F. Supp. 835 (D. Mont. 1988).

As stated above, the management of these federal public lands is dictated by federal legislation, such as FLPMA and RPA, and corresponding federal regulations. Nonetheless, advocates of the county ordinances in question have suggested that when a county enacts such ordinances, federal officials are required to follow their dictates. FLPMA and RPA and the corresponding regulations do require federal officials to allow federal, state and local governments and the public an "opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands." 43 U.S.C. § 1712(f); see also 43 C.F.R. § 1610.4 ("At the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resource use, development and protection opportunities for consideration in the preparation of the resource management plan"); 16 U.S.C. § 1604 ("[t]he Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies"); 36 C.F.R. § 219.7(a) ("The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes"). However, these coordination provisions do not require federal officials to follow local government plans or ordinances. While a county may enact local land use plans or ordinances that affect federal public lands, these plans and ordinances may not conflict with a federal land use plan or federal law.

In summary, Congress's power over Article IV federal public lands is paramount. "A different rule would place the public domain of the United States completely at the mercy of state legislation." Kleppe, 426 U.S. at 543. State legislation cannot prevail on federal public lands when it conflicts with federal legislation, and likewise a county ordinance or land use plan applicable to federal public lands will not be allowed to stand when it conflicts with federal law. Whether a specific ordinance will have legal effect will require an analysis of the particular ordinance with the foregoing principles in mind.

Similarly, a county government does not have the authority to prevent the federal government from acquiring lands within a county. The federal government may purchase land from a state, with the state's consent, under the authority of Article I of the United States Constitution. Lands purchased under the authority of Article I, known as federal enclaves, are either governed exclusively by the federal government or by a combination of both the federal and state governments. Silas Mason Trading Co. v. Tax Comm'n, 302 U.S. 186, 203-09 (1937); James v. Dravo Contracting Co., 302 U.S. 134, 143 (1937). The federal government may also use its inherent sovereign powers to acquire land by eminent domain. U.S. Const., Amend. V; Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525 (1885); Kohl v. United States, 91 U.S. 367, 374 (1876); see also 43 U.S.C. § 1715. Finally, Congress has provided that under certain circumstances the federal government may engage in land exchanges with private property owners or a state. 43 U.S.C. § 1716. In any of the methods outlined above, a

county does not have the authority to prevent the federal government from acquiring or exchanging these lands. Any proposed county ordinance that prohibits or limits such action by the federal government is in direct conflict with the United States Constitution and federal legislation.

I will now address the state aspects of the questions presented. The State's authority to manage and regulate land uses on state lands is grounded in the Montana Constitution and implemented by state statutes. The Montana Constitution, art. X, § 4, provides that the board of land commissioners has the authority "to direct, control, lease, exchange and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions." Article X, section 11 of the Montana Constitution provides that "[a]ll lands of the state ... shall be public lands of the state. They shall be held in trust for the people ...." Mont. Code Ann. § 77-1-202 implements these provisions by providing, in pertinent part, that the board of land commissioners "shall exercise general authority, direction, and control over the care, management, and disposition of state lands." This provision applies mainly to state trust lands. The Legislature has also given other agencies authority to manage non-trust lands. For example, the Department of Fish, Wildlife, and Parks has authority to manage state parks, recreation areas, monuments, historic sites, and game management areas. MCA §§ 23-1-102, 87-1-209. These provisions make clear that it is the State, not county governments, that has the authority to manage state lands.

A county board of commissioners does not have the authority to prevent the State from acquiring lands within a county. As sovereigns, state governments may exercise their police powers to secure and promote public welfare. Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 206-07, 119 P. 554, 560 (1911). A state government may use its power of eminent domain to acquire property for the public welfare if the state pays the owner just compensation for the condemned property. Mont. Const., art. II, § 29; see also generally MCA §§ 70-30-101 to -322. The State, via the board of land commissioners, may also exchange state lands under its control or enter into agreements to purchase lands. See, e.g., Mont. Const., art. X, § 4 ("The [board of land commissioners] has the authority to direct, control, lease, exchange, and sell school lands"); MCA §§ 77-1-202, -214, -301; Mont. Const. art. IX, § 4 ("The legislature shall provide for the ... acquisition ... of scenic, historic, archaeologic, scientific, cultural, and recreational areas ... for their use and enjoyment by the people"); MCA § 87-1-209 (addresses acquisition and sale of lands or waters). A board of county commissioners therefore does not have the authority to prevent the State from acquiring land within a county's border when the State chooses to acquire such land by lawful authority.

In conformity with the internal guidelines of this office, I have chosen to issue the foregoing as an informal unpublished letter of advice rather than as a formal published opinion. Informal letters of advice are used in response to opinion requests when, as in this case, the issues presented are straightforward and can be resolved by reference to readily available authority. Moreover, a formal opinion is generally not appropriate with respect to questions surrounding the constitutionality of proposed legislation.

I believe that the answers to your questions are clear from the cases and constitutional provisions cited above. Counties lack the power to enact land management ordinances for federal and state lands which conflict with federal and state law. My discretionary decision to

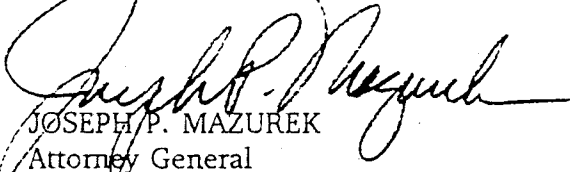
Mike McGrath and Keith D. Haker

Page 5

June 11, 1993

issue this advice in a letter rather than a formal opinion does not indicate any uncertainty about the legal advice set forth above.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/ces/dlh